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SUPREME COURT OF ARKANSAS

No. CR10-207

STATE OF ARKANSAS, APPELLANT, VS. APRIL JANELLE BROWN, APPELLEE,	**Opinion Delivered** December 9, 2010 APPEAL FROM THE PULASKI COUNTY COURT, NO. CR-07-1234, HON. WILLARD PROCTOR, JR., JUDGE, REVERSED AND REMANDED.

PAUL E. DANIELSON, Associate Justice

Appellant State of Arkansas appeals from the circuit court's order sealing appellee April Janelle Brown's conviction. The State's sole point on appeal is that the circuit court erred in doing so. We reverse the circuit court's order and remand to set aside the order to seal.

A review of the record reveals that on January 26, 2007, Brown was arrested and charged with the offense of first-degree terroristic threatening. She pled guilty and was sentenced to probation for two years, along with certain conditions. The circuit court noted on the judgment and disposition order that Act 548 was to apply. The circuit court's register of actions contained a notation regarding sentencing pursuant to Acts 531 and 548 of 1993. The plea statement did not contain any notation reflecting the applicability of any expungement provision.

In August 2009, Brown filed a petition to seal her conviction, stating that she had been sentenced under the provisions of Ark. Code Ann. § 16-90-906,[1] which provides for the sealing of a defendant's record. The State filed an objection. On November 19, 2009, the circuit court held a hearing on Brown's petition. There, the State argued that because terroristic threatening is a violent offense and not one targeted by the General Assembly for community-correction placement, Brown was not eligible to be sentenced pursuant to the community-punishment statutes or have her record sealed.

The circuit court ruled that it was going to grant Brown's petition on a detrimental-reliance theory because she had been sentenced pursuant to Act 531.[2] Consequently, on December 17, 2009, the circuit court filed its order sealing Brown's conviction. That order was supplemented on December 23, 2009. The State now appeals.[3]

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[1]While Brown's petition to seal, and subsequently, the court's order to seal, lists section 16-90-906 as the sentencing provision under which Brown was sentenced, that was clearly an error, as that section only applies to an individual whose charges were nolle prossed, whose charges were dismissed, or who was acquitted at trial.

[2]The State notes that the circuit court referred to Act 548 on the order and Act 531 at the hearing; however, these are now both codified under one statute, Ark. Code Ann. § 16-93-1201 et seq. (Repl. 2006). Therefore, our analysis is unaffected by that discrepancy.

[3]The State's notice of appeal states that it is appealing from the circuit court's order to seal; however, the wrong date is listed. The State lists August 11, 2009, when the order to seal was not filed until December 17, 2009, and the supplemental order was filed on December 23, 2009. However, this court has held that, when it was clear what order the appellant was appealing from given the issues raised in the notice of appeal, an inaccurate date listed for the order appealed from in the notice of appeal was merely a scrivener's error. *See Duncan v. Duncan*, 2009 Ark. 565. Here, the only issue on appeal is the State's allegation that the circuit court erred by entering the order to seal, and the notice of appeal states that the order to seal is the order they are appealing from. It was clearly a scrivener's error to list

The State argues, for its sole point on appeal, that the circuit court erred in finding that Brown's record was eligible for sealing. It contends that the offense of terroristic threatening is not one of the offenses targeted by the General Assembly for community-correction placement. Therefore, the State argues, the circuit court's order to seal must be reversed. Brown did not respond.

While this court would typically first consider whether the State's appeal is proper under Arkansas Rule of Appellate Procedure–Criminal 3, it need not do so in the instant case. This court has previously held that, despite a criminal designation, the State's appeal from an order to seal a criminal conviction is civil in nature and does not require satisfaction of or compliance with Rule 3. *See State v. Webb*, 373 Ark. 65, 284 S.W.3d 273 (2008); *State v. Burnett*, 368 Ark. 625, 249 S.W.3d 141 (2007).

Turning to the merits, this court has held that a sentence must be in accordance with the statutes in effect on the date of the crime. *See State v. Burnett*, 368 Ark. 625, 249 S.W.3d 141 (2007). It has further held that a circuit court does not have the power to expunge a defendant's record when the defendant was not sentenced under one of the statutes that specifically provides for expunging the record. *See id.* A sentence is void or illegal when the court lacks authority to impose it. *See id.*

Here, Brown's conviction was ineligible for expungement under Ark. Code Ann. § 16-93-1201 et seq. (Repl. 2006). While the circuit court may have believed Brown's

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August 11, 2009, as the date and we, therefore, reach the merits.

conviction was eligible and sentenced her accordingly, section 16-93-1207 clearly states that:

> Upon the successful completion of probation or a commitment to the Department of Correction with judicial transfer to the Department of Community Correction *for one (1) of the offenses targeted by the General Assembly for community correction placement*, the court may direct that the record of the offender be expunged of the offense of which the offender was either convicted or placed on probation . . . .

Ark. Code Ann. § 16-93-1207(b)(1) (emphasis added). As used in this subchapter, "target group" means

> a group of offenders and offenses determined to be, but not limited to, theft, theft by receiving, hot checks, residential burglary, commercial burglary, failure to appear, fraudulent use of credit cards, criminal mischief, breaking or entering, drug paraphernalia, driving while intoxicated, fourth or subsequent offense, *all other Class C or Class D felonies that are not either violent or sexual* and that meet the eligibility criteria determined by the General Assembly to have significant impact on the use of correctional resources, Class A and Class B controlled substance felonies, and all other unclassified felonies for which the prescribed limitations on a sentence do not exceed the prescribed limitations for a Class C felony and that are not either violent or sexual.
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> . . . .
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> For the purposes of this subdivision (10)(A), "violent or sexual" includes all offenses against the person codified in § 5-10-101 et seq., § 5-11-101 et seq., § 5-12-101 et seq., § 5-13-201 et seq., § 5-13-301 et seq., and § 5-14-101 et seq., and any offense containing as an element of the offense the use of physical force, the threatened use of serious physical force, the infliction of physical harm, or the creation of a substantial risk of serious physical harm.

Ark. Code Ann. § 16-93-1202(10)(A)(i), (iii) (emphasis added). Arkansas Code Annotated § 5-13-301 defines the offense of terroristic threatening, the crime for which Brown was convicted. As shown above, that offense is specifically listed as a "violent or sexual" offense against the person under this statute and, therefore, is not one of the offenses targeted by the General Assembly for community-correction placement. Terroristic threatening is a

conviction ineligible for expungement, and the circuit court erred in entering an order to seal. For this reason, we reverse and remand to set aside the order to seal.

Reversed and remanded.